

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: :
:
CHERYL CIBULA PAYNE, : Case No: 20-30524
: Chapter 13
Debtor. :

APPLICATION FOR A RULE TO SHOW CAUSE

COMES NOW the Debtor Cheryl Cibula Payne, by counsel, and applies to this court for the entry of a Rule to Show Cause against Thomas Clifford Payne, James M. Goff, II, and James M. Goff, II, P.C., and in support thereof states as follows:

1. The Debtor filed a petition under chapter 13 on January 31, 2020.
2. At the time the petition was filed, the Debtor's ex-husband Thomas Clifford Payne was represented by James M. Goff, II, and/or James M. Goff, II, P.C., in a divorce case in the Chesterfield County Circuit Court, Thomas Clifford Payne v. Cheryl Cibula Payne, Case No: CL16-2435 ("the Divorce Case").
3. On January 15, 2020, a Final Decree was entered in the Divorce Case.
4. On February 5, 2020, Thomas Clifford Payne by James M. Goff, II, and/or James M. Goff, II, P.C., first filed in the Divorce Case a Motion to Rehear and Reconsider ("the Motion") and then filed an Amended Motion to Rehear and Reconsider ("the Amended Motion") , a faxed copy of each of which are attached hereto as exhibits.
5. The Motion recognizes the bankruptcy will materially affect the court's equitable distribution award and requests the court rehear and reconsider its award, in violation of the automatic stay. The subsequent Amended Motion

recognizes the bankruptcy filing and seeks to “restructure marital assets and debts”, in violation of the automatic stay.

6. The Motion and Amended Motion are an (1) the continuation of a proceeding to recover a claim against the Debtor that arose before the commencement of this case, (2) a threat to continue a judicial process against the Debtor which was brought before the filing of the petition, (3) an attempt to enforce against the Debtor or against property of the estate, a judgment obtained before commencement of this case, and (4) an act to exercise control over property of the estate.
7. The acts by Thomas Clifford Payne and James M. Goff, II, and/or James M. Goff, II, P.C., caused the Debtor great amount of emotional distress since her bankruptcy counsel told her that the stay would stop any attempt to modify or enforce the Final Decree against her while she was in bankruptcy.
8. A creditor or a creditor’s legal representative has an affirmative duty, post-petition, to discontinue any proceeding it has initiated or continued, or to take other appropriate steps to halt that proceeding if the proceeding jeopardizes or threatens in any way the integrity of the bankruptcy estate, or exposes the debtor to harassment or coercion or otherwise inhibits the debtor’s breathing spell from her creditors. See Skillforce, Inc. v. Hafer, 509 BR 525 (E.D. VA 2014).
9. Based on the facts and circumstances related above, Thomas Clifford Payne and James M. Goff, II, and/or James M. Goff, II, P.C., have willfully violated the automatic stay; they have caused the Debtor to suffer anguish,

inconvenience, embarrassment, annoyance; and they may have caused the Debtor to incur additional attorney's fees and costs in the Divorce Case.

WHEREFORE, the Debtor prays that this Court issue a Rule to Show Cause against Thomas Clifford Payne and James M. Goff, II, and/or James M. Goff, II, P.C., requiring that they appear before this Court and show cause why they should not be held in contempt for their willful violation of the automatic stay under §362 and why sanctions, including an award of damages, both actual and punitive, and an award of attorney's fees should not be imposed upon them.

Date: February 6, 2020

CHERYL CIBULA PAYNE
By Counsel

/s/James H. Wilson, Jr.
James H. Wilson, Jr.
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PROOF OF SERVICE

I certify that I have this 6th day of February, 2020, mailed a true copy of this Application to James M. Goff, II, Esq., James M. Goff, II, P.C., 10310 Memory Ln., Ste. 2C, P.O. Box 313, Chesterfield, VA 23832 and to Thomas Clifford Payne, 105 Oakwood Ave., Hopewell, VA 23860.

/s/ James H. Wilson, Jr.
James H. Wilson, Jr., VSB No: 27878
Counsel for Debtor